

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
COUNTY OF PLACER, CALIFORNIA)	File No. 0001750425
)	
WARREN C. HAVENS)	File Nos. 0001775400, 0001791005
)	
and)	
)	
MARITEL SOUTHERN PACIFIC, INC.)	File No. 0001823171
)	
Request for Waiver of Part 80 Rules to Permit Use)	
of Maritime Frequencies for Private Land Mobile)	
Radio Communications)	
)	
Requests for Waivers of Section 80.773 of the)	
Rules Regarding Signal Strength)	

ORDER

Adopted: February 16, 2005

Released: February 16, 2005

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

1. *Introduction.* On June 14, 2004, MariTEL Southern Pacific, Inc. (MariTEL) filed applications for consent to partition and disaggregate portions of its VHF Public Coast (VPC) geographic license to the County of Placer, California (Placer)¹ and Warren C. Havens (Havens).² Also filed was a corresponding request for waiver of Part 80 of the Commission's Rules to permit Placer to use the frequencies that it would receive to upgrade its analog public safety communications system. The applications also request waivers to implement an agreement among the parties to authorize operation at their common borders with higher signal strengths than the rules permit. In addition, on June 30 and July 29, 2004, respectively, Havens³ and MariTEL⁴ filed applications and waiver requests to modify their adjoining VPC geographic license to authorize the signal strength permitted by their agreement among the parties. For the reasons that follow, we grant the waiver requests to the extent indicated below, and will grant the above-captioned applications.

2. *Background.* Placer is a county in northern California that runs from Sacramento County east-northeast to the California-Nevada state line. The county is within VPC Service Area (VPCSA) 6, the geographic license for which is held by MariTEL under Call Sign WPOJ536. Nearby portions of California and Nevada are within adjoining VPCSA 34, the geographic license for which is held by Havens under Call Sign WPOJ521.

¹ See FCC File No. 0001750425.

² See FCC File No. 0001775400.

³ See FCC File No. 0001791005.

⁴ See FCC File No. 0001823171.

3. Placer states that its conventional analog public safety radio system, which supports 1,800 users associated with a number of County departments and agencies, is severely congested, difficult to maintain and not capable of meeting, or expanding to meet, its public safety and emergency communications needs.⁵ It states that the county is experiencing significant population and economic growth that has created a need for improved coordination and communication.⁶ To address its needs, Placer developed a plan to implement a trunked, digital state-of-the-art voice and data communications network using narrowband technology to serve Federal, state and local agencies.⁷ Placer states that the VHF band offers the most workable spectrum for this new system. It also states that, because its current system uses VHF frequencies, the continued use of the VHF band allows for an easier transition to a new system and lower transition costs.⁸ However, according to Placer, sufficient Part 90 VHF spectrum is not available.⁹

4. Consequently, as permitted under Section 80.60 of the Commission's Rules, MariTEL proposes to partition and disaggregate VPC spectrum in Placer County to Placer,¹⁰ which requests that its public safety use of the spectrum be licensed under, and governed by, Part 90 of the Commission's Rules.¹¹ Placer emphasizes that it is not seeking to use VPC channels in areas where they might otherwise be used to meet demand for marine VHF communications and that it does not propose to use marine Channel 87B (161.975 MHz), which is one of two frequencies allocated internationally for Automatic Identification Systems (AIS),¹² an international maritime navigation safety communications system adopted by the International Maritime Organization and Safety of Life at Sea Convention intended for collision avoidance, monitoring and tracking.¹³

5. MariTEL also seeks to assign different VPC spectrum to Havens along the border between VPCSA 6 and 34.¹⁴ The proposed assignment to Havens is pursuant to an agreement among

⁵ See MariTEL-Placer Waiver Request at 2.

⁶ *Id.*

⁷ *Id.* at 3.

⁸ *Id.* at 4.

⁹ *Id.*

¹⁰ Specifically, MariTEL seeks consent to partition and disaggregate ten 12.5 kHz channel pairs (157.2000/161.8000 MHz, 157.2125/161.8125 MHz, 157.2250/161.8250 MHz, 157.2375/161.8375 MHz, 157.2500/161.8500 MHz, 157.2625/161.8625 MHz, 157.2750/161.8750 MHz, 157.2875/161.8875 MHz, 157.3000/161.9000 MHz, 157.3125/161.9125 MHz,) to Placer in various portions of the County. See FCC File No. 0001750425, Schedule C.

¹¹ In the alternative, Placer seeks a waiver of Sections 80.123 and 80.371(c)(1)(i) of the Commission's Rules to permit use of the frequencies for private land mobile radio (PLMR) communications. (We note that the Commission has proposed to amend Section 80.123 to permit PLMR use of VPC frequencies. See Maritel, Inc. and Mobex Network Services, LLC, *Notice of Proposed Rule Making*, WT Docket No. 04-257, 19 FCC Rcd 15225 (2004).) It also requests a waiver of Section 80.123(e) to allow the base station equipment of its system to operate with 125 watts transmitter output power and 50 watts mobile power, maximum, consistent with the power levels permitted for operations licensed under Part 90. Placer also seeks a waiver of the Section 80.123(f) prohibition on mobile-to-mobile communications on land.

¹² See MariTEL-Placer Waiver Request at 6.

¹³ The Commission has proposed to designate Channel 87B exclusively for AIS use in maritime VPC service areas, including VPCSA 6. See *generally* Amendment of the Commission's Rules Regarding Maritime Automatic Identification Systems, *Memorandum Opinion and Order and Notice of Proposed Rule Making*, WT Docket No. 04-344, 19 FCC Rcd 20071 (2004).

¹⁴ Specifically, MariTEL seeks consent to partition and disaggregate four 25 kHz channel pairs, four 12.5 kHz channel pairs, and one 6.25 kHz channel pair (157.18750/161.78750 MHz, 157.26250/161.86250 MHz, 157.28750/161.88750 MHz, 157.31250/161.91250 MHz, 157.31875/161.91875 MHz, 157.33125/161.93125 MHz, (continued....)

MariTEL, Havens, and Placer designed to protect each licensee's operational rights and ensure reliable signal strengths in their respective areas of operation.¹⁵ Specifically, Section 80.773(c) of the Commission's Rules specifies that VPC geographic area licensees cannot exceed field strength of +5 dBu at their service area boundaries, unless all affected geographic licensees agree to higher field strength.¹⁶ MariTEL, Placer and Havens have entered into an agreement to allow them to exceed the limitation as follows¹⁷:

» Placer would be permitted to operate in the partitioned area¹⁸ on the channel pairs it receives from MariTEL with a signal strength of 37 dBu at the boundary between the partitioned area and the remainder of VPCSA 6, and with a signal strength of 54 dBu at the boundary between the partitioned area and VPCSA 34.

» Havens would be permitted to operate in the partitioned area¹⁹ and elsewhere in VPCSA 34²⁰ on the channel pairs he receives from MariTEL with a signal strength of 50 dBu at the boundary between the partitioned area and the remainder of VPCSA 6.

» MariTEL would be permitted to operate on the channel pairs Havens receives from it with a field strength of 7 dBu at the boundaries between the partitioned area²¹ and the remainder of VPCSA 6.²²

Although Section 80.773(c) permits the parties to agree to higher field strengths, the parties request a waiver so that their licenses will reflect the agreed-upon field strengths, in order to protect their rights in the event that one of the parties loses its authorization.²³

6. The assignment applications went on public notice on June 23, 2004.²⁴ On July 23, 2004, the National Telecommunications and Information Administration (NTIA) filed a petition to deny the assignment applications.²⁵ On August 5, 2004, Placer and Motorola (Placer's equipment vendor) filed a

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157.34375/161.94375 MHz, 157.35625/161.95625 MHz, 157.38750/161.98750 MHz) to Havens in various areas along the border between VPCSA 6 and 34. See FCC File No. 0001775400, Schedule C.

¹⁵ MariTEL-Placer Waiver Request at 17; MariTEL-Havens Waiver Request at 2.

¹⁶ 47 C.F.R. § 80.773(c).

¹⁷ MariTEL-Placer Waiver Request at 18; MariTEL-Havens Waiver Request at 3.

¹⁸ *I.e.*, the parts of VPCSA 6 in which MariTEL is partitioning and disaggregating spectrum to Placer.

¹⁹ *I.e.*, the parts of VPCSA 6 in which MariTEL is partitioning and disaggregating spectrum to Havens.

²⁰ FCC File No. 0001791005 seeks to modify Havens's license for Call Sign WPOJ521 to reflect the agreed-upon higher signal strength.

²¹ *I.e.*, the parts of VPCSA 6 in which MariTEL is partitioning and disaggregating spectrum to Havens.

²² FCC File No. 0001823171 seeks to modify MariTEL's license for Call Sign WPOJ536 to reflect the agreed-upon higher signal strength.

²³ MariTEL-Placer Waiver Request at 18; MariTEL-Havens Waiver Request at 3.

²⁴ *Public Notice*, Report No. 1863 (WTB rel. June 24, 2004).

²⁵ See Letter dated July 23, 2004 from Fredrick R. Wentland, Associate Administrator, Office of Spectrum Management, NTIA to John B. Muleta, Chief, Wireless Telecommunications Bureau (NTIA Petition). Petitions to deny assignment applications are due within fourteen days of the date of the public notice listing the application as accepted for filing. 47 C.F.R. § 1.948(j). Thus, petitions to deny in this case were due July 7, 2004. (That the applications were removed from streamlined processing (see *Public Notice*, Rep. No. 1870 (WTB rel. July 30, 2004)) did not change the due date for petitions to deny.) Placer and MariTEL argue that the NTIA Petition should

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consolidated opposition to NTIA's petition,²⁶ and MariTEL filed an opposition.²⁷

7. *Discussion.* Section 1.925 of the Commission's Rules provides that we may grant a waiver if it is shown that (a) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and grant of the requested waiver would be in the public interest; or (b) in light of unique or unusual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.²⁸ Based on the record before us, we conclude that the waiver requests should be granted. Specifically, we grant the waiver requests and conclude that the underlying purpose of the subject rules would not be served by application to the instant case and grant of the requested waivers would be in the public interest.

8. We have granted similar requests to allow the partitioning and disaggregation of VPC spectrum for use in public safety radio systems.²⁹ NTIA maintains its opposition to assignment applications in the VPC band because of potential interference to future AIS frequencies, and argues that the present applications should be denied or held in abeyance pending the outcome of the Commission's pending AIS rulemaking proceeding.³⁰ We agree with Placer, however, that these applications can be processed without prejudice to resolution of the pending AIS issues.³¹ In this connection, we note that Placer's operations do not include Channels 87B or 88B, and they would be subject to any rule changes adopted in that proceeding. Moreover, given the existing need for additional public safety spectrum that has been demonstrated by Placer, we do not believe that it would be in the public interest to defer its use of the VPC frequencies in question because of issues involving other VPC frequencies. As a result, we believe that the public interest would be best served under an approach whereby NTIA's interests in resolving the pending AIS issues are accommodated without suspending implementation of the proposed transaction.³²

9. NTIA and the Coast Guard state that Placer's proposed operations could cause interference to AIS operations, and thus adversely affect the safe navigation of vessels in or near Placer's

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therefore be dismissed as untimely. Under the circumstances, we conclude that it is in the public interest to accept the NTIA Petition, in order to address the critical matters of homeland security and maritime safety that it raises. Moreover, considering the NTIA Petition is in accord with the agreement between the Commission and NTIA to give each other notice of, and an opportunity to comment on, relevant proposed actions. *See Memorandum of Understanding Between the Federal Communications Commission and the National Telecommunications Administration* (dated Jan. 31, 2003).

²⁶ Opposition of County of Placer, California and Motorola, Inc. to Petition to Deny (filed Aug 5, 2004) (Placer Opposition).

²⁷ Opposition of MariTEL, Inc. to Petition to Deny (filed Aug. 5, 2004) (MariTEL Opposition).

²⁸ 47 C.F.R. § 1.925(b)(3); *see also* WAIT Radio v. FCC, 418 F. 2d 1153, 1159 (D.C. Cir. 1969).

²⁹ *See* Commonwealth of Virginia, *Order*, 19 FCC Rcd 15454 (WTB PSCID 2004) (assignment from MariTEL to Commonwealth of Virginia) (*MariTEL-Virginia Order*); Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action, *Public Notice*, Report No. 1852 (WTB rel. June 9, 2004) (FCC File Nos. 0001662537, 0001662656) (assignment from Havens to State of Montana); Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action, *Public Notice*, Report No. 1411 (rel. Feb. 5, 2003) (FCC File No. 0001132016) (assignment from MariTEL to State of South Dakota).

³⁰ *See* NTIA Petition at 1-2; *see also supra* n.13.

³¹ *See* Placer Opposition at 2.

³² *See MariTEL-Virginia Order*, 19 FCC Rcd at 15456-57 ¶ 6.

navigable waterways, and could impair the Coast Guard's ability to perform its missions.³³ The Coast Guard states that even with the exclusion of Channel 87B and the surrounding interstitial channels, Placer's proposed operations could cause interference to maritime communications.³⁴ NTIA and the Coast Guard argue that since the applications do not set forth Placer's detailed technical parameters, it is not possible to analyze potential interference to maritime communications. However, based on Placer's request to have field strength of up to +54 dBu at the service area boundaries, and the likelihood that antennas will be located on mountaintops, they believe Placer's operations could pose a threat of interference to maritime communications and AIS operations in areas of Lake Tahoe, the Ports of Oakland, San Francisco, Sacramento, and Stockton, and the northern California coast.³⁵ The Coast Guard asks that we require that land mobile operations must not cause any harmful interference to current or future maritime communications.³⁶ It also asks that land mobile operations be subject to prior technical coordination with NTIA to assure there is no radio interference.³⁷

10. MariTEL³⁸ and Placer³⁹ contend that the project was engineered so as not to interfere with marine communications and AIS operations. Placer states that, because of homeland security and other reasons, it gave only the boundary coordinates and channel pairs associated with the assignment, as required by Section 80.60⁴⁰ of the Commission's Rules.⁴¹ Placer indicates that the actual technical details of the proposed operations, such as locations, antenna heights, power levels and frequency plans will vary, and actual power levels will be much lower in many cases than levels assumed by the Coast Guard.⁴² It also states that, if requested, it is prepared to disclose information to the NTIA and Coast Guard regarding its operations.⁴³

11. We recognize the importance of interference-free AIS operations and other maritime communications. We do not believe, however, that the record before us demonstrates that Placer's proposed operations pose a sufficient interference threat to warrant denial of the waiver request. Moreover, as noted above, we conclude that the pendency of the AIS rulemaking proceeding does not require us to withhold approval of Placer's entire request. Instead, we will grant the applications for Placer's proposed operation. In addition, we grant Placer's request for a waiver of the Part 80 rules to permit its public safety operations on VPC spectrum to be governed by Part 90 of the Commission's Rules. We have granted similar waivers to the States of South Dakota and Montana and the Commonwealth of Virginia,⁴⁴ and we believe that the same factors that warranted grant of those waivers are present in the instant matter.

³³ See NTIA Petition at 2; Letter dated July 21, 2004 from, B. Judge, Commander, U.S. Coast Guard, Chief, Office of Claims and Litigation, to Fredrick R. Wentland, Chief Associate Administrator, Office of Spectrum Management, NTIA (Coast Guard Letter), attached to NTIA Petition.

³⁴ Coast Guard Letter at 2.

³⁵ *Id.* at 3.

³⁶ *Id.*

³⁷ *Id.*

³⁸ MariTEL Opposition at 8.

³⁹ Placer Opposition at 2.

⁴⁰ See 47 C.F.R. § 80.60(b)-(c).

⁴¹ Placer Opposition at 3.

⁴² *Id.* at 4.

⁴³ *Id.*

⁴⁴ See *supra* n.29.

12. We imposed conditions on the Virginia grant that we did not impose on the South Dakota and Montana grants, because the other states lack areas of substantial marine activity. Similarly, we will impose the same requirements on Placer as we did on Virginia. Specifically, in order to address the concerns raised by NTIA and the Coast Guard, we expressly condition our grant of the application and waiver request on Placer not causing interference to current or future marine communications, including but not limited to AIS operations. We note that Placer has stated that it is willing to share information regarding its operations with Coast Guard and NTIA.⁴⁵ Therefore, we will not require prior technical coordination with NTIA, but we expect Placer to work closely with the Coast Guard and NTIA to ensure that all contemplated operations pose no potential for interference to marine communications, and to act quickly in the event interference is reported.⁴⁶

13. NTIA also asserts that granting the requested waiver would amount to a reallocation of frequencies from maritime mobile to land mobile service in the partitioned areas.⁴⁷ We disagree. As MariTEL states, grant of the requested waiver would no more be a *de facto* reallocation than would grant of any waiver of otherwise applicable service rules.⁴⁸ Indeed, the Commission's rules permit VHF public coast licensees to serve units on land.⁴⁹ Further, the Rules previously permitted land mobile users to be licensed on VHF public coast frequencies in some areas.⁵⁰ We find it decisionally significant that neither rule was ever deemed a reallocation of spectrum. Taking all of these factors into account, we conclude that granting Placer's request for waiver would not affect a reallocation of frequencies and, as Placer states,⁵¹ would promote the Commission's goals of providing for flexible and efficient use of the spectrum.⁵²

14. Finally, the Coast Guard argues that the requests for waiver of Section 80.773, by which the parties seek to ensure that their agreement for a reliable signal strengths in each licensee's area of operation will continue in the event one of the licensees defaults on its license obligations, is seeking a new rule and is beyond our authority.⁵³ We disagree. As Placer notes, its request does not inhibit the Commission from making rule changes of general applicability should conditions change.⁵⁴ The limited conditions they seek are to provide protection to the licensees from any disruption of their operations that could result from actions of parties outside of their control. We believe that it is in the public interest to provide the appropriate protection by applying the operational conditions⁵⁵ to the authorizations.

15. *Conclusion.* We grant the assignment applications for the requested frequencies. We also grant Placer's request for a waiver of Part 80 of the Commission's Rules to permit its public safety operations on VPC spectrum to be governed by Part 90 of the Commission's Rules, and all three parties' requests for waivers of Section 80.773. However, because Placer's operations could, in some circumstances, present a potential for interference to maritime operations, the instant waiver requests are

⁴⁵ Placer Opposition at 4.

⁴⁶ See *MariTEL-Virginia Order*, 19 FCC Rcd at 15458-59 ¶ 10.

⁴⁷ NTIA Petition at 2.

⁴⁸ MariTEL Opposition at 5.

⁴⁹ See 47 C.F.R. § 80.123.

⁵⁰ See 47 C.F.R. § 90.283 (1997).

⁵¹ Placer Opposition at 5 – 6.

⁵² See *MariTEL-Virginia Order*, 19 FCC Rcd at 15457 ¶ 7.

⁵³ Coast Guard Letter at 2.

⁵⁴ Placer Opposition at 4.

⁵⁵ See *supra* ¶ 5.

granted on the express condition that no interference is caused to current or future marine communications, including but not limited to AIS operations.

16. For reasons set forth above, IT IS ORDERED, pursuant to the authority of Sections 4(i) and 303(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the Request for Waiver filed by County of Placer, California in association with FCC File No. 0001750425 on June 14, 2004, IS GRANTED SUBJECT TO THE CONDITION THAT no interference is caused to current or future marine communications, including but not limited to AIS operations.

17. IT IS FURTHER ORDERED that the Requests for Waiver filed by Warren C. Havens in association with FCC File Nos. 0001775400 and 0001791005 on June 14 and 30, 2004, ARE GRANTED.

18. IT IS FURTHER ORDERED that the Request for Waiver filed by MariTEL Southern Pacific, Inc. with FCC File No. 0001823171 on July 29, 2004, IS GRANTED.

19. IT IS FURTHER ORDERED that applications FCC File Nos. 0001750425, 0001775400, 0001791005, and 0001823171 SHALL BE PROCESSED consistent with this *Order* and the Commission's Rules, and the licenses at issue shall be modified accordingly.

20. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
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